

1 ARIZONA VOICE FOR CRIME VICTIMS

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9 **IN THE ARIZONA SUPREME COURT**

10 IN THE MATTER OF:

11 PETITION TO AMEND THE
12 ARIZONA RULES OF CRIMINAL
13 PROCEDURE

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PETITION TO AMEND THE
ARIZONA RULES OF CRIMINAL
PROCEDURE

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16 Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, Arizona
17 Voice for Crime Victims (AVCV) respectfully submits this petition to amend the
18 Arizona Rules of Criminal Procedure by integrating the rights guaranteed to
19 victims by our constitution, Ariz. Const. art. II, § 2.1, and its implementing
20 legislation, Ariz. Const. art. II, §§ 2.1(D) and A.R.S. §§ 13-4401-42, throughout
21 each applicable rule provision and repealing Rule 39. AVCV's proposed
22 amendments are attached to this petition.
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1 Arizona Voice for Crime Victims (AVCV), founded in 1996, is a non-profit
2 organization located in Phoenix, Arizona that provides pro bono legal
3 representation and social services to victims of crime in state and federal criminal
4 proceedings. AVCV seeks to foster a fair and compassionate justice system in
5 which all crime victims are informed of their rights under the Arizona Victims'
6 Bill of Rights (VBR), fully understand their rights, and have a meaningful way to
7 participate and assert these constitutional guarantees throughout the criminal
8 justice process. To achieve these goals, AVCV empowers victims of crime
9 through legal advocacy and social services. A key part of AVCV's mission is
10 working to give the judiciary information and policy insights that may be helpful in
11 ensuring that victims' rights are upheld by educating the judiciary of the practical
12 day-to-day application of victims' rights in their courtrooms. When criminal court
13 judges and the attorneys involved in each criminal case fully understand when and
14 how victims' rights apply in each situation, victims can truly have the meaningful
15 participation that the VBR intended.

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20 Currently, Rule 39 of the Arizona Rules of Criminal Procedure generally
21 addresses victims' rights. Rule 39 was adopted "in response to the growing
22 perception that victims of crime [were] encountering serious problems with the
23 criminal justice system." Ariz. R. Crim. P. 39 cmt. (1989). Attempting to
24 "ameliorate, if possible, the problems encountered by victims," the Court adopted
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1 Rule 39 in the hope it would “comprehensively” address the concerns of victims.
2 *Id.* After voters adopted the VBR in November 1990, Rule 39 had to be amended
3 to conform to the mandates of the state constitution. Rule 39, however, still only
4 provides an overview of what rights crime victims are entitled to. Unlike the rights
5 of the accused or the rights of the state, which are appropriately and carefully
6 presented in the criminal rules, Rule 39 does not provide proper guidance to trial
7 courts and attorneys on when victims’ rights apply in relation to the remainder of
8 the Rules. A comprehensive approach to victims’ rights will require full
9 integration into the Rules so that trial courts and attorneys are properly instructed
10 on what the VBR mandates in each situation.
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14 Proposition 104 aimed to change the criminal justice culture for victims in
15 Arizona by providing constitutional rights that would take victims from the
16 sidelines of the criminal justice system to becoming active participants. Steven J.
17 Twist & Keelah E.G. Williams, *Twenty-Five Years of Victims’ Rights in Arizona*,
18 47 Ariz. St. L.J. 421 (2015). Notably, Proposition 104 received overwhelming
19 support of Arizona’s voters and the Arizona Victims’ Bill of Rights (VBR) became
20 effective on November 27, 1990. Gessner H. Harrison, *The Good, the Bad, and*
21 *the Ugly: Arizona’s Courts and the Crime Victims’ Bill of Rights*, 34 Ariz. St. L.J.
22 531, 532 (2002). The VBR enumerated specific rights to justice and due process,
23 which include rights:
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1. To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
2. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
3. To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.
4. To be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing.
5. To refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.
6. To confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.
7. To read pre-sentence reports relating to the crime against the victim when they are available to the defendant.
8. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
9. To be heard at any proceeding when any post-conviction release from confinement is being considered.
10. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.
11. To have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the legislature to ensure the protection of these rights.
12. To be informed of victims' constitutional rights.

Ariz. Const. art. II, §§ 2.1(A)(1)-(12)

Integrating victims' rights into each applicable rule would be consistent with the rights established in paragraph 11 of the VBR, namely that "*all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights.*" (emphasis added.) Ariz. Const. art. II., § 2.1(A)(11). Full integration of victims' rights into each applicable Rule is further justified by the very language of the VBR, which guarantees, among other things, that victims have a right to be treated with fairness, respect, and dignity throughout the criminal justice process and to have "all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights." Ariz. Const. art. II, § 2.1(A)(1). This Court has acknowledged that the VBR broadly recognizes these rights to fairness, respect, and dignity. *J.D.;M.M. v. Hegyi*, 236 Ariz. 39, 42 (Ariz. 2014). The purpose of the VBR and its implementing legislation is to provide crime victims with the "basic rights of respect, protection, participation and healing of their ordeals." *Champlain v. Sargeant*, 192 Ariz. 371, 375 (Ariz. 1998) (citing 1991 Ariz. Sess. Laws ch. 229, § 2). The constitutional mandate requiring that victims be treated with "fairness" throughout the criminal justice process can be best achieved by fully integrating victims' right into the Arizona Rules of Criminal Procedure, which, in turn, will "integrate victims into the day to day workings of the process." Paul Cassell, *Treating Crime Victims*

1 *Fairly: Integrating Victims into the Federal Rules of Criminal Procedure*, 2007
2 Utah L. Rev. 861, 863 (2007).

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4 It is important to point out that in seeking integration, AVCV is not asserting
5 that victims are parties to a criminal case nor is AVCV seeking to elevate victims
6 to party status. Arizona case authority is clear that victims of crime are not parties
7 to a criminal prosecution. *State v. Lamberton*, 183 Ariz. 47 (1995) (victim not an
8 aggrieved party with standing to file her own petition for review in a Rule 32
9 proceeding); *Lindsay R. v. Cohen*, 236 Ariz. 565 (App. 2015) (noting VBR did not
10 make victims parties). Although victims are not parties, they are participants with
11 enforceable rights. AVCV merely seeks to ensure that trial courts and attorneys
12 are aware of each applicable situation where a victim may assert a right guaranteed
13 under the VBR or the VRIA.

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16 Our legislature recognizes that victims have a right to meaning full
17 participation during a criminal prosecution. A “victim has standing to seek an
18 order, to bring a special action or to file a notice of appearance in an appellate
19 proceeding, seeking to enforce any right to challenge an order denying any
20 right...” A.R.S. § 13-4437(A); *State ex rel. Montgomery v. Padilla*, 238 Ariz. 560,
21 566 (App. 2015) (A request for an order in a criminal case must be timely, in
22 writing, served and filed with the court. For victims, the subject matter of such a
23 request is limited and must be directed to enforcing any right or to challenging an
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1 order denying any right guaranteed to victims). Additionally, “on the filing of a
2 notice of appearance, counsel for the victim shall be endorsed on all pleadings and,
3 if present, be included in all bench conferences and in chambers meetings and
4 sessions with the trial court that directly involve a victim's right...” A.R.S. § 13-
5 4437(D). Because victims have participatory rights, it is essential that Arizona’s
6 trial courts and attorneys are provided proper guidance through this Court’s rule
7 making authority regarding when victims’ rights apply in relation to the remainder
8 of the Rules. This guidance is generally lacking in Rule 39 which plainly states
9 what rights victims have, but it gives little direction of how each individual right
10 should be applied in various situations. Integration, on the other hand, will
11 specifically lay out when victims’ rights are implicated and must be considered
12 throughout the criminal justice process.

16 Maintaining Rule 39 would only continue to provide a general overview of
17 victims’ rights and welcome misunderstanding of their applicability by trial courts
18 and attorneys. Full integration of the VBR into the applicable Rules would not
19 create new victims’ rights or violate the rights of the accused. Rather, it would
20 give effect to the VBR by allowing victims meaningful participation into the day-
21 to-day workings of the process. Additionally, full integration would provide
22 comprehensive guidance to criminal justice professionals using the constitutional
23 and statutory mandates that already exist. Ensuring each applicable rule fully

complies with the constitutional and statutory provisions will safeguard the rights of crime victims, especially for the majority who do not have the benefit of their own counsel.

Arizona has traditionally been on the forefront of victims' rights. It was one of the first states in the country to provide victims of crime with constitutional rights. Harrison, 34 Ariz. St. L.J. at 532 (2002). Since then, this Court has been tasked with balancing the rights of victims with those of the accused and has addressed issues of first impression that have both protected and upheld victims' rights in Arizona and provided guidance to other jurisdictions in the country. AVCV asks the Court to leave a legacy for future criminal justice professionals by fully integrating victims' rights throughout the Arizona Rules of Criminal Procedure and providing victims the medium needed to have meaningful participation throughout the entire criminal justice process.

Respectfully submitted January 10, 2019.
ARIZONA VOICE FOR CRIME VICTIMS

BY: /s/ COLLEEN CLASE